

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6500 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

YAKUNKHAN ALIAS KALIYO

YUSUFKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6500 of 2001
MS BANNA S DUTTA for Petitioner No. 1
MR DP JOSHI, AGP, for Respondents No. 1-3
-

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

1. The petitioner has been detained by an order
passed by the Commissioner of Police, Ahmedabad City,
Ahmedabad, on the April 3, 2001, in exercise of powers
under Section 3(1) of the Gujarat Prevention of

Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration five offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Dutta, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on the 2nd April, 2001 and the order detention was passed on the 3rd April, 2001. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 Ms. Dutta submitted further that a representation was made on the 31st July, 2001 to the Chief Minister, which was received by the Government on the 6th August, 2001. The representation was decided by the Government only on August 14, 2001 and despatched on August 16, 2001. The time consumed in deciding the representation between August 6, 2001 and August 14, 2001 is not explained. The delay has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. She, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on the 31st March and the 1st April, 2001, respectively. The same have been verified by the detaining authority on the 2nd April, 2001 and the order is passed on the 3rd April, 2001. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that

the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (*Bai Amina v. State of Gujarat & Ors.*, 1981 GLR 1186 and *Kalidas Chandubhai Kahar v. State of Gujarat & Ors.*, 1993(2) GLR 1659).

5.1 So far as the contention regarding delay in considering the representation is concerned, the same is not explained. The fact remains that a representation of July 31, 2001 received by the Government on August 6, 2001 was decided on August 14, 2001. This abnormal delay would result into infringement of right of the detenu of making an effective representation. Therefore, the continued detention would be vitiated as held by this Court in the case of *Anubhai M. Jani v. State of Gujarat*, 2000(3) GLR 649. In view of the above, the petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 3rd April, 2001, passed against the detenu is hereby quashed. The detenu-Yakubkhan alias Kalio Yusufkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt